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IN THE UNITED STATES SUPREME COURT

OCTOBER TERM, 1983

RIVCOM CORPORATION,

Petitioner,

v.

AGRICULTURAL LABOR RELATIONS BOARD,

and

UNITED FARM WORKERS OF AMERICA, AFL-CIO,

Respondents,

On Petition For A Writ Of Certiorari To The Supreme Court Of The State Of California

BRIEF IN OPPOSITION OF RESPONDENT AGRICULTURAL LABOR RELATIONS BOARD

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TABLE OF CONTENTS

	PAGE
QUESTIONS PRESENTED	1
STATEMENT OF THE CASE	2
ARGUMENT	6
I. NEITHER THE BOARD'S ORDER NOR THE DECREE OF ENFORCEMENT ENJOINS EXECUTION OF THE MUNICIPAL COURT JUDGMENT. MOREOVER THE ISSUES RAISED BY THE SUPREME COURT'S DECISION CONCERN ONLY A STATE'S ALLOCATION OF PRIMARY JURISDICTION AMONG ITS OWN COURTS AND AGENCIES.	8
II. PETITIONER PRESENTS NO SUBSTANTIAL FEDERAL QUESTION CONCERNING THE MIGRANT AND SEASONAL AGRICULTURAL WORKERS PROTECTION ACT ("MSAWPA"). NOT ONLY DID PETITIONER FAIL TO RAISE ANY SUCH ISSUE TO THE STATE TRIBUNALS, THE ISSUE IS PATENTLY FRIVOLOUS.	17
CONCLUSION	22

LIST OF AUTHORITIES CITED

CASES	PAGE
Aircraft & Diesel Equipment Corp. v. Hirsch 331 U.S. 752 (1947)	12
Banales v. Municipal Court 132 Cal.App.3d 67 (1982)	12
Bill Johnson's Restaurants v. N.L.R.B. ___ U.S. ___, 103 S.Ct. 2161 (1983)	14,15,16
Hazelton v. City of San Diego 183 Cal.App.3d 131 (1960)	5
Herndon v. State of Georgia 295 U.S. 441 (1935)	18
People v. Woods 19 Cal.App.2d 556 (1937)	6
S.P. Growers Assn. v. Rodriguez 17 Cal.3d 719 (1976)	15
United Farm Workers v. Superior Court 72 Cal.App.3d 268 (1977)	12
Vargas v. Municipal Court 22 Cal.3d 902 (1978)	15

STATUTES

California

Labor Code section 1153(c)	9
1160.8	4,9
Rules of Court, rule 976(d)	6
977	6

LIST OF AUTHORITIES (Con.)

	PAGE
STATUTES	
Federal	
Farm Labor Contractor Registration Act of 1963, 7 U.S.C. sections 2041-2053	17
Migrant and Seasonal Agricultural Workers Protection Act, 29 U.S.C. 1801-1872	1,17,21
National Labor Relations Act, 29 U.S.C. section 160(f)	4
Other Authorities	
Davis, Administrative Law Text (3d ed.)	11

QUESTIONS PRESENTED

1. Does petitioner present a substantial federal question concerning its right of access to State courts by alleging the existence of a conflict between a non-final municipal court judgment of eviction and the State Supreme Court's enforcement of an order of the California labor board forbidding petitioner from discriminatorily evicting its farmworker tenants?

2. Does petitioner present a substantial federal question by raising for the first time in these proceedings an alleged conflict between the ALRB's order and the federal Migrant and Seasonal Agricultural Workers Protection Act, without having previously raised the issue to any State tribunal?

STATEMENT OF THE CASE

Petitioner Rivcom Corporation is an agricultural employer subject to the jurisdiction of the California Agricultural Labor Relations Board (ALRB or Board). As such, on August 17, 1979, petitioner was adjudged by the Board to have committed certain unfair labor practices against its employees. (Pet. App., 99a-180a.) Of particular importance for these proceedings was the Board's finding that petitioner commenced proceedings to evict its farmworker tenants because of their union activities and in retaliation for their exercise of collective bargaining rights guaranteed them by State statute. (Pet. App., 113a.) The Board ordered petitioner to cease and desist from evicting its tenants for a discriminatory or retaliatory purpose. (Pet. App., 117a.)

Prior to issuance of the Board's order, petitioner had commenced eviction

proceedings against its employees in the Ventura County Municipal Court. However, that court delayed its proceedings in order to permit the ALRB to adjudicate the merits of the unfair labor practice charges. (Pet. App., 192a, para. 10.) Trial of the municipal court action commenced on October 22, 1979, two months after issuance of the Board's decision and order. (Pet. App., 181a.)

The municipal court concluded that it was not bound by the factual findings of the ALRB (Pet. App., 192a, para. 9), and therefore made its own contrary findings. In particular, the municipal court found that petitioner's "dominant purpose for evicting defendants, and each of them, is not retaliation against defendants for their exercise of any statutorily protected right, nor discrimination against any defendant because of union membership and activity." (Pet. App., 190a, para. 63.) Based upon

these contrary findings, the municipal court entered judgment for petitioner, evicting the farmworker tenants from their housing and awarding petitioner damages. (Pet. App., 201a).

The tenants appealed the judgment to the appellate department of the superior court. In the meantime, petitioner had filed in the Court of Appeal a petition for review of the Board's order pursuant to California Labor Code section 1160.8. (Cf., 29 U.S.C. sec. 160(f).) On petition of both the tenants and the Board, the California Supreme Court stayed the execution of the municipal court judgment pending disposition of the proceedings to review the Board's decision and order. (Pet., 9; Pet. App., 32a.)

Ten months after issuance of the ALRB's decision and order, in June 1980, the County of Ventura obtained an injunction requiring petitioner and its lessor to make

repairs to the sewage and water facilities at the site of the disputed housing. Petitioner appealed that decision and obtained a judgment from the Court of Appeal reversing the injunction. On petition of the tenants, the California Supreme Court granted hearing, vacating the decision of the appellate court. (Pet., 12.)[1/]

On October 25, 1982, the Court of Appeal issued its decision on review of the Board's order. The court set aside the Board's order and remanded the matter to the Board for reconsideration. (Pet. App., 89a.) The California Supreme Court granted hearing, thereby vacating the appellate court decision. (See Hazelton v. City of San Diego, 183 Cal.App.3d 131, 136 (1960);

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1. On February 2, 1984, the California Supreme Court remanded the case to the Court of Appeal for reconsideration in light of Rivcom v. Agricultural Labor Relations Bd., the decision which is the subject of these proceedings. (Pet. App., 1a.)

People v. Woods, 19 Cal.App.2d 556, 560 (1937); Cal. Rules of Court, rules 976(d), 977.) The appeal of the municipal court judgment was meanwhile proceeding. (Pet. App., 32a.)

On October 17, 1983, the California Supreme Court issued its decision, which is the subject of the instant proceeding. In that decision, the Court upheld the Board's findings that petitioner's eviction of its tenants was unlawfully motivated. (Pet. App., 17a.) The Court issued a decree enforcing the Board's order, including the order that petitioner cease and desist from evicting its employees in furtherance of an antiunion policy. (Pet. App., 27a, fn. 25; 34a.)

ARGUMENT

Petitioner presents two arguments as grounds for a writ of certiorori. First, petitioner contends that the California Supreme Court violated its First Amendment

right of access to the courts. (Pet., 15.) Petitioner characterizes the Board's order as "enjoining enforcement of a valid state-court judgment." (Pet., i.)

Second, petitioner argues that the Supreme Court decision "conflicts with federal law and is invalid under the Supremacy Clause of the United States Constitution." (Pet., 23.) This is so, argues petitioner, because the Board's order requires the "lessee of a new owner of a farm to maintain migrant labor housing that does not, and, as a practical matter, cannot comply with federal or state health and safety requirements, when the operation of such housing is prohibited by federal law." (Pet., i.)

Respondent will demonstrate that petitioner's first argument mischaracterizes the facts: neither the Board's order nor the Supreme Court's decree of enforcement thereof enjoins execution of the municipal

court judgment. As for petitioner's second argument, respondent will demonstrate that this issue was never raised to the ALRB or to the State Supreme Court and is therefore not properly before this Court.

I

NEITHER THE BOARD'S ORDER NOR THE DECREE OF ENFORCEMENT ENJOINS EXECUTION OF THE MUNICIPAL COURT JUDGMENT. MOREOVER THE ISSUES RAISED BY THE STATE SUPREME COURT'S DECISION CONCERN ONLY A STATE'S ALLOCATION OF PRIMARY JURISDICTION AMONG ITS OWN COURTS AND AGENCIES.

Petitioner has misrepresented the Board's order and that of the Supreme Court, characterizing those orders as "blotting out [the municipal court] judgment as completely as if it had never existed." (Pet., 15.) Petitioner complains that the Supreme Court did not harmonize the Board's order with the judgment of the municipal court, that "[i]t did not even acknowledge the careful and detailed findings and conclusions of the trial court." (Ibid.) The simple answer,

of course, is that the municipal court's judgment was not before the Court. That judgment is on appeal to the appellate department of the superior court. The trial court record was not before the Supreme Court and, in any event, was immaterial to the question under consideration: "Were the findings of the Board supported by substantial evidence?" The proceedings from which the Supreme Court's decision issued, it will be remembered, were proceedings under California Labor Code section 1160.8 to review the decision and order of the Board.

As is evident from the very face of the Board's order (Pet. App., 117a), the Board prohibited petitioner only from "[d]iscouraging membership of employees in the UFW or any other labor organization by...attempting to evict, or evicting those employees..., except as authorized by Labor Code section 1153(c) of the Act." The

Supreme Court recognized the limited scope of the order, observing that "[t]he cease-and-desist order is directed only at evictions in furtherance of the antiunion policy." (Pet. App., 27a, fn. 25.) Absolutely no mention is made by the Board or the Supreme Court of the municipal court judgment or any other judgment.

To be sure, respondent would be less than candid were it to pretend that the Supreme Court decision had no impact whatsoever on the municipal court judgment. There is certainly an evident conflict between the two orders: On the one hand, the Board found that petitioner's eviction efforts were discriminatorily motivated and retaliatory. Those findings were upheld by the State Supreme Court. On the other hand, the municipal court found no unlawful motivation; those findings are currently on appeal. The Board's decision and order were certainly before the municipal court at the

time of trial, but the court chose to ignore the Board's findings. (Pet. App., 192a, paras. 9, 10.) The question before the superior court in the appeal of the municipal court judgment, then, will be the extent, if any, to which the municipal court was bound by the findings of the administrative agency.

Such an inquiry does not rise to the level of a substantial federal question, however. The issue is only one of "primary jurisdiction." "The doctrine of primary jurisdiction....determines whether the court or the agency should make the initial decision." (Davis, Administrative Law Text (3d ed.), sec. 19.01, p. 373.) "The very purpose of providing either an exclusive or an initial and preliminary administrative determination is to secure the administrative judgment either, in the one case, in substitution for judicial decision or, in the other, as foundation for or

perchance to make unnecessary later judicial proceedings." (Aircraft & Diesel Equipment Corp. v. Hirsch, 331 U.S. 752, 767 (1947).)

California appellate courts have held that the Board has "exclusive primary jurisdiction over all phases of the administration of the Act as regards unfair labor practices" (United Farm Workers v. Superior Court, 72 Cal.App.3d 268, 271 (1977)), and that the initial determination as to whether arguably protected conduct is in fact protected must be made by the Board and not by the court. (Banales v. Municipal Court, 132 Cal.App.3d 67, 70 (1982).) Indeed, the California Supreme Court certainly held here that the Board had primary jurisdiction to consider whether an eviction amounted to an unfair labor practice. (Pet. App., 27a-28a, fn. 25.) However, the precise question of whether the municipal court is bound by the findings of the Board has yet to be squarely decided.

No doubt such a decision will be the outcome of the appeal from the municipal court judgment in favor of petitioner.

The fact, however, is that there is no injunction of the municipal court judgment; there is only an apparent conflict between the order of the Board and the non-final judgment of the municipal court. The appellate department of the superior court could conclude that the municipal court was not bound by the findings of the Board, and may affirm the judgment of the municipal court as supported by the evidence before the trial court. Such a conflict would undoubtedly require final resolution by the State Supreme Court.

On the record before this Court, then, it is quite apparent that the facts do not support petitioner's assertion that the order of the Board enjoins enforcement of

the municipal court judgment.[2/] Moreover, such conflict as does exist by virtue of the Supreme Court's decision creates only an issue of primary jurisdiction intra-State, not a question of First Amendment right of access to State courts as was presented in Bill Johnson's Restaurants, Inc. v. N.L.R.B., __ U.S. ___, 103 S.Ct. 2161 (1983).

Petitioner relies on Bill Johnson's to support its claim of an absolute right to invoke judicial eviction proceedings, contending that the Board's cease-and-desist order interferes with that "right". But Bill Johnson's manifestly does not stand for the proposition that California is powerless to place limits on petitioner's use or abuse

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2. The tenants, however, would doubtless welcome petitioner's stipulation to that effect, inasmuch as such a stipulation would make their appeal of the municipal court judgment moot.

of the State's judicial processes. In fact, as a matter of California law petitioner does not have an absolute right to judicial process for eviction. Under State law, judicial eviction proceedings may not be used to retaliate for a tenant's exercise of rights protected by statute -- including the Agricultural Labor Relations Act. (Vargas v. Municipal Court, 22 Cal.3d 902 (1978); S.P. Growers Assn. v. Rodriguez, 17 Cal.3d 719 (1976).) Bill Johnson's is thus irrelevant to these proceedings because, as a matter of California law, proof of retaliatory motive is an absolute defense to an eviction action; the only question is whether it is the Board or the municipal court which makes the determination as to motive. That is purely a matter of State law and application of the principles of primary jurisdiction. Indeed, the Board's cease-and-desist order does nothing more than prohibit petitioner from doing that

which State law forbids in any event, viz., evicting its tenants in retaliation for exercise of statutory rights.

Put simply, petitioner's extension of the holding in Bill Johnson's to the situation here would wholly destroy the doctrine of primary jurisdiction. For, under petitioner's reasoning, a State could never vest exclusive primary jurisdiction of a subject matter in an administrative agency and divest its courts of jurisdiction to adjudicate controversies within the agency's area of expertise. Respondent does not believe that this Court intended such a result.

In conclusion, petitioner has failed to present a substantial federal question because, as a factual matter, the California Supreme Court's decision does not enforce the Board's cease-and-desist order as against the municipal court's judgment of eviction. Moreover, such conflict as is

created by the decision of the Supreme Court involves only issues of California's allocation of primary jurisdiction over labor disputes between its courts and its administrative agency.

II

PETITIONER PRESENTS NO SUBSTANTIAL FEDERAL QUESTION CONCERNING THE MIGRANT AND SEASONAL AGRICULTURAL WORKERS PROTECTION ACT ("MSAWPA"). NOT ONLY DID PETITIONER FAIL TO RAISE ANY SUCH ISSUE TO THE STATE TRIBUNALS, THE ISSUE IS PATENTLY FRIVOLOUS.

In its petition, Rivcom argues for the first time that the ALRB's order requires it to operate a labor camp in violation of the Migrant and Seasonal Agricultural Workers Protection Act (MSAWPA), 29 U.S.C. sections 1801-1872,[3/]

3. Although the MSAWPA only became effective on January 14, 1983, MSAWPA was enacted to replace the Federal Farm Labor Contractor Registration Act of 1963 (FLCRA), 7 U.S.C. sections 2041-2053; at least for purposes of this case, MSAWPA did not substantially change the provisions of its predecessor statute.

and that the Board order is thus "untenable under the Supremacy Clause of the United States Constitution." (Pet., 23.) The short answer to petitioner's contention is that Rivcom is precluded from raising this argument in this Court, because it was never presented to any state tribunal; the issue has therefore been waived. (Herndon v. State of Georgia, 295 U.S. 441, 443 (1935).)

The Board will, however, briefly respond to the merits of Rivcom's argument. Undoubtedly petitioner did not earlier raise the asserted conflict between the Board's order and the MSAWPA, because there is no record evidence supporting Rivcom's assertion that the housing on Rancho Sespe is hazardous or unfit for human habitation,

as petitioner now contends. (Pet., 23.)[4/] Petitioner did not introduce any evidence regarding the condition of the housing at the Board's unfair labor practice proceeding. Four years later, Rivcom asked the Supreme Court to take judicial notice of various administrative determinations and/or actions of a county agency concerning the employee housing at Rancho Sespe. The Supreme Court denied the motion for judicial notice, but assumed -- without deciding -- that the events represented by the documents offered by Rivcom and Riverbend were true. (Pet. App.,

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4. None of the evidence regarding the condition of the housing that was before the municipal court was before the ALRB or the State Supreme Court; it is thus not part of the record in this case. Petitioner notably fails to provide any citations to the adminstrative record in support of its contentions regarding the condition of the housing. Rivcom's discussion of the conditions at the Rancho Sespe housing at pages 24-25 of its petition is based totally on "facts" outside the record and should therefore be disregarded.

33a.) For purposes of review of the Board's order, the condition of the housing was irrelevant. The Court noted that the Board's order is not "an absolute command to maintain the labor camp permanently....[but] is directed only at evictions in furtherance of the antiunion policy." (Pet. App., 27a, fn. 25.) The Board conceded, as recognized by the Court, that its order "runs only against the growers and does not prevent the county from taking actions immediately necessary under state and county law to protect life and limb." (Pet. App., 33a.)

Thus, the only issue is whether the Board's order requires petitioner to maintain the housing in substandard condition; that is the gravamen of petitioner's complaint. The Court stated that the Board's order "implicitly includes the command to maintain the housing in habitable condition at least until the growers reach agreement or good-faith

impasse with the union about its future.... In any enforcement proceeding...they may face a heavy burden in showing that an eviction required by health or safety hazards on the property was not the result of their efforts to avoid the Board's directive." (Pet. App., 33a.) Thus, if anything, the Board's order requires petitioner to maintain the housing in a habitable state -- a state fully consistent with the requirements of MSAWPA.

In summary, then, petitioner's second proffered ground for assertion of jurisdiction by this Court is patently frivolous. The Board's order manifestly requires no violation of federal law; to the contrary, if anything, it requires compliance with federal law pending collective bargaining negotiations. Most importantly, petitioner did not raise this

purported conflict with federal law either to the Board, to the State Court of Appeal, or to the California Supreme Court.

CONCLUSION

Inasmuch as petitioner has raised no substantial federal question for consideration by this Court, the petition for writ of certiorari should be denied.

Dated: April 18, 1984

Respectfully submitted

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